

**CITY OF EL PASO, TEXAS  
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** Planning and Economic Development

**AGENDA DATE:** November 16, 2010 Regular Agenda

**CONTACT PERSON/PHONE:** Kathryn Dodson, PhD, Director 541-4670

**DISTRICT(S) AFFECTED:** ALL

**SUBJECT:**

Discussion and action on a Resolution that the City Manager be authorized to sign a Contract of Sale between the City of El Paso and River Oaks Properties, Ltd and to sign all other documents approved by the City Attorney, or his designee, necessary and proper to consummate the purchase of the following described property: Lots 1 through 10, both inclusive, Block 1, Satterthwaite Addition, an addition to the City of El Paso, El Paso County, Texas; also known as 601 N. Oregon Street, El Paso, El Paso County, Texas. (District 8)

**BACKGROUND/DISCUSSION:**

In an effort to continue the rehabilitation of downtown El Paso, the City can enter a Contract of Sale with River Oaks Properties, Ltd to purchase the building at 601 N. Oregon, informally known as the Old Saddleblanket Building. Given the visibility of the current building and the proximity to notable downtown projects, the purchase and renovation of the building removes a blighted property and furthers the City's efforts to rehabilitate the area.

**PRIOR COUNCIL ACTION:**

No

**AMOUNT AND SOURCE OF FUNDING:**

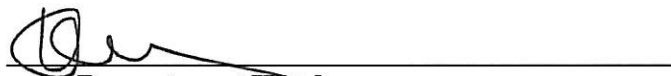
\$1,262,114.98 (General Fund)

**BOARD/COMMISSION ACTION:**

The Economic and Community Development/Quality of Life and Tourism Legislative Review Committee recommended that the item be brought to City Council without a recommendation from the LRC.

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

  
\_\_\_\_\_  
Department Head

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the City Manager be authorized to sign a Contract of Sale between the CITY OF EL PASO and RIVER OAKS PROPERTIES, LTD and to sign all other documents approved by the City Attorney, or his designee, necessary and proper to consummate the purchase of the following described property:

Lots 1 through 10, both inclusive, Block 1, Satterthwaite Addition, an addition to the City of El Paso, El Paso County, Texas; also known as 601 N. Oregon Street, El Paso, El Paso County, Texas

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.


THE CITY OF EL PASO

\_\_\_\_\_  
John F. Cook, Mayor

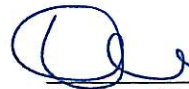
ATTEST:

\_\_\_\_\_  
Richarda D. Momsen, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Kathryn B. Dodson, Ph.D., Director  
Planning & Economic

STATE OF TEXAS       §  
                                  §  
COUNTY OF EL PASO   §

**CONTRACT OF SALE**  
(City Acquisition)

This Contract is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010 by and between the **CITY OF EL PASO, TEXAS**, hereinafter referred to as the "City," and **RIVER OAKS PROPERTIES, LTD**, hereinafter referred to as "Seller."

**NOW, THEREFORE**, for and in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1.     Description of Property. The Seller hereby agrees to sell and convey and the City hereby agrees to acquire free and clear of any liens or encumbrances, the following real property located in El Paso County, Texas:

Lots 1 through 10, both inclusive, Block 1, SATTERTHWAITE  
ADDITION, an Addition to the City of El Paso, El Paso County, Texas;  
also known and numbered as 601 N. Oregon Street, El Paso, Texas

together with any interest of the Seller in (i) all improvements, if any, and (ii) all right, title and interest of the Seller in and to any easements, appurtenances, and rights-of-way, and all interests in, on or to, any land, highway or street, in, on, across, in front of, abutting, or adjoining any such real property, all of such property, hereinafter collectively referred to as the "Property."

2.     Amount of Payment of Purchase Price. The purchase price for the Property shall be a total of ONE MILLION TWO HUNDRED SIXTY TWO THOUSAND ONE HUNDRED FOURTEEN AND 98/100 DOLLARS (\$1,262,114.98).

2.1    Payment of Purchase Price. The full amount of the purchase price will be payable in cash at the closing.

3.     Conditions to City's Obligations. The obligations of the Seller hereunder to consummate the transaction contemplated herein are subject to the satisfaction of each of the following conditions, any of which may be waived, in whole or in part, in writing by the City, at or prior to Closing.

3.1    Inspection.

(a)    Subject to the provisions of Paragraph 6.1 hereinafter, the City shall complete its inspection of the Property on or before **ninety (90)** calendar days after the execution of this Contract by the City (the "Inspection Period"). For the purposes hereof, the City may complete or cause to be completed inspections of the Property by inspectors of the City's choice. Inspections may include, but shall not be limited to: (i) physical property inspections; (ii) environmental assessment or engineering study including the

performance of tests such as soils tests, water tests or air sampling. The Seller shall permit the City and the City's inspectors access to the Property at all reasonable times. In the case of any invasive testing (taking samples, etc.), the City shall provide to the Seller evidence that the consultant making such inspection carries liability insurance and is properly licensed. During the Inspection Period, the City may determine in its sole and absolute discretion whether the Property is suitable for the City's needs. In the event that the City in its sole and absolute discretion determines that the Property is not suitable for its needs, the City may terminate this Contract by delivering a written termination notice to the Seller within the Inspection Period and One Hundred and 00/100 Dollars (\$100.00), which is independent contract consideration for this right to cancel. During the Inspection Period, the Seller covenants and agrees to make available to the City the Property. Such inspection shall be conducted by the City, and permitted by the Seller, on business days during normal business hours. All information provided by the Seller to the City or obtained by the City relating to the Property in the course of its review shall be treated as confidential information by the City, to the extent allowed by federal and state law, and in the event the City terminates this Contract, the City shall provide the Seller with all reports, studies, documents and other information obtained by the City relating to the Property. To the extent allowed by Texas State law, the City shall be liable for all damage or injury to any person or Property resulting from any such inspection occasioned by the acts of the City, its employees, agents or representatives and the City shall repair all damages arising from or caused by the inspections.

3.2 Title Insurance. Within **thirty (30)** calendar days after the date of execution of this contract, the City at its expense will order a title commitment ("Commitment"), accompanied by copies of all recorded documents affecting the property for the issuance of an Owner's Policy of Title Insurance with respect to the Property, in an amount to be decided by the City ("Owner's Policy").

3.3 Title Objections. The City will give the Seller written notice on or before the expiration of **sixty (60)** calendar days after it receives the Commitment that the condition of the title set forth in the Commitment is or is not satisfactory. In the event the City states that the condition is not satisfactory, the City will specifically set forth in such notice the defect or exception to title that is deemed objectionable. The Seller may at its option promptly undertake to eliminate or modify all unacceptable matters to the reasonable satisfaction of the City. Otherwise, this condition will be deemed acceptable and any objection by the City will be deemed waived.

4. Representations and Warranties of Seller. The Seller hereby represents, to the best of its knowledge, covenants, and warrants to the City, as follows:

4.1 Pre-Closing Claims.

(a) The Seller agrees that the City's acceptance of title to the Property under the conveyance documents should not create any liability on the City's part to third parties that have claims of any kind against the Seller in connection with the Property. The City hereby expressly disclaims any and all liability to third parties that have any claims against the

Seller. The City will not assume or agree to discharge any liabilities pertaining to the Property that occurred or accrued prior to the date of Closing.

(b) During the term of this Contract, the Seller and the City each agree to promptly inform other party of any correspondence, directive, inquiry, demand, request, or similar communication from any federal or state environmental agency relating to the Property, to reasonably cooperate with the other party on the response to and handling of such communication and any related proceeding, and allow the reasonable participation of the other party in connection with the same.

4.2 **"AS IS, WHERE IS"**. THIS CONTRACT IS AN ARMS-LENGTH AGREEMENT BETWEEN THE PARTIES. THE PURCHASE PRICE WAS BARGAINED ON THE BASIS OF AN "AS IS, WHERE IS" TRANSACTION. THE CITY ACCEPTS THE AS IS, WHERE IS, AND WITH ALL FAULTS, AND EXCEPT AS THE WARRANTY OF TITLE, WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF WHATSOEVER KIND, EXPRESS OR IMPLIED, WRITTEN OR ORAL, IT BEING THE INTENTION OF THE CITY AND THE SELLER TO EXPRESSLY NEGATE AND EXCLUDE ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO THOSE REGARDING: (A) THE CONDITION OF THE PROPERTY AND THE CONDITION; (B) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE CITY MAY CONDUCT THEREON; (C) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; AND (D) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, THE CITY IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY THE SELLER. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT THE SELLER HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. THE SELLER IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY BROKER, AGENT, ATTORNEY, EMPLOYEE OR OTHER PERSON. IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE FOR THE PROPERTY REFLECTS THAT ALL OF THE PROPERTY IS SOLD BY THE SELLER AND PURCHASED BY THE CITY SUBJECT TO THE FOREGOING. The terms of this paragraph will be recited in the Deed conveying the Property at Closing.

4.3 Authority. The Seller has full right, power and authority to convey the property to the City and to consummate this transaction as provided in this Contract without the joinder of any other person or entity.

4.4 Easements. After the Effective Date, the Seller shall not create any easement affecting the Property without the prior written consent of the City.

4.5 THE STATEMENTS MADE HEREIN ARE MADE IN RELIANCE UPON THE COMMITMENT ISSUED BY THE TITLE COMPANY AS TO MATTERS OF RECORD AND ARE LIMITED TO THE ACTS OF SELLER AS TO MATTERS NOT OF RECORD. These representations and warranties shall expire at Closing.

5. Closing. Closing. The closing of this transaction ("Closing") shall take place at the offices of the title insurer for the Property (the "Title Company") on or before **ninety (90)** calendar days after the execution of this Contract by the City.

5.1 Real Property Taxes. The Seller agrees to pay the taxes due on the Property for the year 2010 prorated through the day of closing.

5.2 Closing Costs. The following costs and expenses shall be paid as follows in connection with the Closing.

- (a) All recording fees arising from the recordation of documents necessary to show good title to the Property shall be paid by the City.
- (b) Premiums and other charges for the issuance of the Owner's Policy of Title Insurance for the Property shall be paid by the City.
- (c) Reasonable and customary escrow fees, if any, shall be paid by the City.
- (d) Each party shall pay the fees and costs of its own counsel.

5.3 Seller's Obligations. At Closing, the Seller shall deliver to the City a duly executed and acknowledged Special Warranty Deed that covenants that grantor grants only that title which grantor may have and that grantor will only defend title against persons claiming by, through, or under the grantor, but not otherwise, conveying the Property, free and clear of any and all liens, encumbrances, conditions, easements, assessments, and restrictions, except for (i) ad valorem taxes for the year of Closing which shall be prorated to the date of Closing, (ii) the standard printed exceptions contained in the usual form of the Owner's Policy, (iii) any other exceptions set forth in the Title Policy which the City has approved pursuant to Paragraph 3.2 above; (iv) any and all restrictions, reservations, covenants, conditions, easements, and other matters, if any, relating to the Property; and (v) all zoning laws, regulations, ordinances of municipal and/or other governmental entities.



5.4 Other Obligations. Each party shall do all other reasonable acts, or deliver any other instruments or documents required or helpful to be done or delivered, in order to consummate this transaction.

6. Termination/Default.

6.1 Permitted Termination. If this Contract is terminated by the City pursuant to a right expressly given it to do so in this Contract, the City will give the Seller One Hundred and 00/100 Dollars (\$100.00), which is independent contract consideration for this right to cancel, and neither party shall have any further rights or obligations hereunder.

6.2 Default by the Seller.

(a) The Seller shall be in default hereunder upon the occurrence of any one or more of the following events:

(1) Any of the Seller's warranties or representations set forth herein are untrue or inaccurate in any material respect;

(2) The Seller shall fail to meet, comply with, or perform any covenant, agreement, or obligation on its part required, within the time limits and in the manner required in this Contract, for any reason.

(b) In the event that the Seller shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the sale of the Property for any reason, except the City's default, or the termination of this Contract in accordance with its terms, the City may enforce specific performance of this Contract.

6.3 Default by City. In the event that City shall fail to fully and timely perform any of its obligations under this Contract, or shall fail to consummate the sale of the Property for any reason, except the Seller's default, or the termination of this Contract in accordance with its terms, due to the difficulty of assessing the Seller's actual damages as a result of such breach by City, the Seller shall have a right to receive One Hundred and 00/100 Dollars (\$100.00) as independent consideration as well as the reasonable and necessary out-of-pocket expenses of the Seller directly relating to this Contract, such sum being agreed upon as liquidated damages for the failure of the City to perform the duties, liabilities and obligations imposed upon it by the terms and provisions of this Contract, and the Seller agrees to accept and take such cash payment as its total, reasonable damages and relief and as the Seller's sole, exclusive remedy hereunder in such event.

7. Miscellaneous.

7.1 Notice. Any notice, demand, direction, request, or other instrument authorized or required by this Contract to be given to or filed with either party, shall be deemed to have been sufficiently given or filed for all purposes, if and when personally delivered or sent by certified mail, postage prepaid, return receipt requested, to the address specified below or at such other address as may be designated in writing by the parties:

Seller: River Oaks Properties, Ltd.  
106 Mesa Park Drive  
El Paso, Texas 79912

City: City Manager  
City of El Paso  
2 Civic Center Plaza  
El Paso, Texas 79901-1196

7.2 Assignment.

(a) The City shall may assign this Contract without the express written consent of Seller. Seller may assign this Contract at its sole discretion without prior notice to, or consent of the City.

(b) Seller may consummate the sale of the Property as part of a so-called like kind or deferred exchange (the "Exchange") pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. Without limitation on the foregoing, Seller may, at its option, assign this Contract and any Earnest Money deposited hereunder to one or more independent third party facilitators or intermediaries who will facilitate the Exchange. Seller agrees to cooperate with the other in the perfection of such an Exchange and to execute any and all documents reasonably necessary to accomplish the same; provided, the City shall not be required to take title to any replacement property or expend funds in relation to its cooperation, nor will the time periods provided hereunder be extended.

8. Entire Agreement/Governing Law. This Contract constitutes the entire agreement between the parties, and supersedes all prior agreements and understandings, written or oral, regarding the subject matter of this Contract, and may be amended or supplemented only by an instrument in writing, executed by the party against whom enforcement is sought. This Contract shall be governed in all respects, including validity, interpretation and effect, by and shall be enforceable in accordance with the laws of the State of Texas.

8.1 Time. Time is of the essence of this Contract and each and every provision hereof.

8.2 Severability. If any provision of this Contract shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portion shall not in any way be affected or impaired.

8.3 Survival of Provisions. The terms contained in this Contract, including without limitation, representations, warranties, covenants and agreements of the parties, shall survive the Closing and shall not be merged therein. In case any one or more of the provisions contained in this



contract for any reason is held invalid, this invalidity will not affect any other provision of this Contract, which will be construed as if the invalid or unenforceable provision had never existed.

8.4 Binding Effect. This Contract shall be binding upon the parties hereto and their respective successors and assigns.

8.5 Compliance. In accordance with the requirements of Section 2B of the Texas Real Estate License Act, the City or its representatives is hereby advised that it should be furnished with or obtain a policy of title insurance or have an abstract covering the Property examined by an attorney of its own selection.

(Signatures begin on next page)

**The above instrument, together with all conditions thereto is hereby EXECUTED**  
by the Seller this                      day of                      , 2010.

SELLER:

**RIVER OAKS PROPERTIES, LTD.,**  
a Texas limited partnership

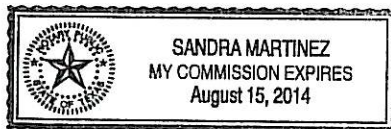
By: River Oaks Asset Management, Inc.,  
a Texas corporation,  
General Partner

By: W 34k  
 Gerald A. Kulin, President  
 Adam Z. Frank,

## ACKNOWLEDGEMENT

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

This instrument was acknowledged before me on the 3 day of November, 2010, by **Adam Z. Frank,**  
~~General Manager~~, President of River Oaks Asset Management, Inc., a Texas corporation, General  
Partner of **River Oaks Properties, Ltd.**, a Texas limited partnership, on behalf of said limited  
partnership.



Sandra Martinez

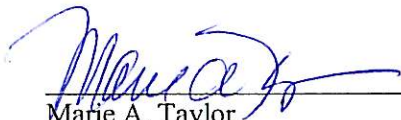
(Signatures continued on next page)

EXECUTED by the City of El Paso this \_\_\_\_ day of \_\_\_\_, 2010.


City of El Paso

By: \_\_\_\_\_  
Joyce Wilson  
City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Marie A. Taylor  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Kathryn B. Dodson, Ph.D., Director  
Planning and Economic Development

**ACKNOWLEDGEMENT**

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO    )

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_, 2010 by  
Joyce Wilson, City Manager of the City of El Paso.

\_\_\_\_\_  
Notary Public, State of Texas

My commission expires:

\_\_\_\_\_